

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2609 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANCHAN ALIAS KANCHARO

Versus

STATE OF GUJARAT

Appearance:

Mr.P.B.Majmudar, Advocate for the petitioner.

Mr.U.R.Bhatt, AGP for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/07/96

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India is filed by the petitioner Kanchan alias Kacharo Mohanbhai Machhi (hereinafter referred to as "the detenu") challenging the legality and validity of the order of his detention dated 23-2-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the said Act") by the District Magistrates,

Bharuch.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on six prohibition cases registered against the detenu by Bharuch City "A" Division Police Station, four out of which are pending in the Court and two are pending at the investigating stage. The detaining authority has also relied on the statements of three witnesses for the alleged anti-social and naferious activities of the detenu. Considering the said material against the detenu, the detaining authority has recorded a finding that the detenu is a "boot-legger" within the meaning of section 2 (b) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessaary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr.P.B.Majmudar, learned Advocate appearing for the detenu, has raised number of contentions. However, it is not necessary to deal with each of them as the present petition can be disposed off on the first contention itself. Mr.Majmudar has submitted that the subjective satisfaction arrived at by the detaining authority that the detenu is a bootlegger is not genuine as the alleged activities of the detenu as a bootlegger do not affect adversely or are not likely to affect adversely the maintenance of public order. In the submission of Mr.Majmudar, the offences alleged against the detenu in the grounds of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. In support of her submission, reliance is placed by Ms Kachhavah on the decision of the Supreme Court in the case of Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad city AIR 1989 SC 491. In the said case, the Supreme Court has laid down as under:

"It may be that the detenu is a bootlegger within the meaning of S.,2 (b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. A

person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.."

I have gone through the statements of the witnesses in the present case and, in my view, the facts in the present case are identical to the case before the Supreme Court and, therefore, the ratio laid down by the Supreme Court in the case of Piyush Kantilal Mehta (Supra) is applicable to the present case. Suffice it to say, the witnesses in the present case have alleged that the detenu, by indulging in use of force and violence and by illegal sale of liquor, has created an atmosphere of fear and terror by beating innocent citizens. It is also alleged that the detenu is indulging in anti-social activities and that the activities were against public order.

Considering the statements of the witnesses, I am of the view that they are vague and general and no reliance can be placed on the same. In view of this observation, I am of the view that the subjective satisfaction arrived at by the detaining authority is not genuine and, therefore, the continuous detention of the detenu is vitiated.

Mr.U.R.Bhatt, learned Assistant Government Pleader, appearing for the respondents, however, submitted that the fact that cases have been registered against the detenu, coupled with the fact that there are statements of the witnesses in support thereof that the detenu is engaged in manufacturing illicit liquor is sufficient to hold that there is likelihood of breach of public order. In the submission of Mr.Bhatt, with a view to preventing this manufacturing activity of illicit liquor, the detaining authority thought it necessary to detain the detenu. In view of the decision of the Supreme Court in Piyush Kantilal's case (supra), it is not possible for this Court to accept the submission of

Mr. Bhatt. Assuming that the allegation of the activity of manufacturing illicit liquor by the detenu is true, the same can , by no stretch of imagination, be construed as causing breach of public order and, therefore, it cannot be said that the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention was genuine. Therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 23-2-96 is quashed and set aside. The detenu Kanchan alias Kacharo Mohanbhai Machhi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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